



STATE REPRESENTATIVE
GARY HEBL
46TH ASSEMBLY DISTRICT

TO: Members of the Assembly Judiciary and Ethics Committee
Members of the Senate Judiciary, Corrections, Insurance, Campaign Finance Reform and Housing Committee

FROM: Representative Gary Hebl

RE: AB 131, relating to the Wisconsin Consumer Act

DATE: April 14, 2009

AB 131 provides a simple amendment to the Wisconsin Consumer Act. The Wisconsin Consumer Act is a state statute that regulates consumer credit transactions and debt collection. This bill clarifies that the statutory requirements for creditors to provide certain consumer protection information also applies to debt collectors who purchase debt from creditors. This bill, in effect, expands the definition of a creditor under the Wisconsin Consumer Act to include debt collectors who purchase debt, who, in legal terms, are known as assignees.

This bill will correct an oversight in drafting. It picks up on a suggestion made by a Court of Appeals decision in *Rsidue v. Michaud*. In this case, Judge Deininger pointed out that the limited definition of a creditor under the WI Consumer Act is not in line with the public policy goals underlying the act. The real intent of the law is to cover all types of debt collectors, not to cover all but one group.

To understand why the Wisconsin Consumer Act should apply to all types of debt collectors, it is important to understand the public policy underlying it. The Wisconsin Consumer Act addresses a problem known as an information asymmetry. These types of problems occur when one party to a transaction, in this case, debt collectors, has an unfair advantage in knowledge, skills and expertise over the party they do business with, in this case, the consumer.

The Wisconsin Consumer Act corrects the information asymmetry by making information available to the consumer. It, in effect, levels the playing field so that the consumer is not forced to conduct extensive discovery to determine how the creditor computed the debt they are collecting.

There's no reason why a consumer should be denied the information they would otherwise receive just because the debt collector working on their case happened to purchase the debt on the secondary market.

Providing this information to the consumer is important because the debt being pursued can be inaccurate, time-barred, discharged in a bankruptcy or the debt collector could simply have the wrong person.

So, in conclusion, this is a simple bill that adds only three words to an existing statute. These three little words can do a lot to protect consumers and to protect the real intent of the Wisconsin Consumer Act, a great public policy that sets Wisconsin apart as a strong consumer protection state. This bill is good public policy. It is good for consumers and it's good for our state.

MADISON OFFICE

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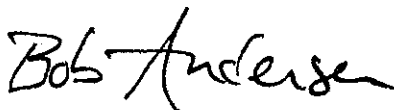
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LEGAL Action
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TO: Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing
Assembly Committee on Judiciary and Ethics

FROM: Bob Andersen
Stacia Conneely



RE: **SB 120/AB 131 – Clarification of WIS. STAT. § 425.109(1) to Ensure that Debt Collectors Who Purchase Debts from Creditors are Required to Explain A Consumer's Debt in Their Pleadings, as is Currently Required for Creditors and Collections Agencies.**

DATE: April 14, 2009

Legal Action of Wisconsin, Inc. (LAW) is a nonprofit organization funded by the federal Legal Services Corporation, Inc., to provide legal services for low income people in 39 counties in Wisconsin. LAW provides representation for low income people across a territory that extends from the very populous southeastern corner of the state up through Brown County in the east and La Crosse County in the west. Consumer law is one of the priorities of the organization.

We agree with the suggestion of the court (Deiningner) below that this would correct what was an oversight when this statute was written. Without the adoption of this amendment, a debt collector who purchases the debt does not have to inform a consumer in a complaint about a whole list of information that is vitally important (see below). There is no reason why a debt collector who purchases a debt should not have to follow the same requirements in a complaint.

The Court of Appeals (*Deiningner*) said:

“Accordingly, even though we may sympathize with Michaud’s belief that our conclusion regarding the limited scope of WIS. STAT. § 425.109(1) is not in keeping with the public policy underlying the WCA, we are not free to rewrite the statute in the way we believe the legislature should have written it, or might have written it, had the present circumstances been brought to the legislature’s attention.”

The legislature certainly could have extended the pleading requirements of WIS. STAT§ 425.109(1) to complaints filed by assignees of creditors. It might easily have done so by simply inserting “or its assignee” at the end of the prepositional phrase “by

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a creditor." Rsidue v. Michaud, 295 Wis 2d 585, 721 NW 2d 718 (Wis App 2006).
[emphasis added]

Consequently the amendment in SB 120/AB 131 would simply be the addition of the underlined material to the existing statute:

425.109 Pleadings. (1) A complaint by a creditor or its assignee to enforce any cause of action arising from a consumer credit transaction shall include all of the following [list of information to be included in the complaint]:

The consumer in this case complained that the debt collector did not include in the complaint "the figures necessary for the computation of the amount" due the plaintiff. The complaint just made general statements about how much the consumer owed.

The statute, s. 425.109, is an important statute, because it contains several requirements for information that need to be included in a complaint against a consumer, including the following:

- an identification of the consumer credit transaction
- a description of the collateral or leased goods involved, if any
- a specification of the facts constituting the alleged default by the consumer
- the actual or estimated amount that it is alleged that the consumer owes, including the figures necessary for the computation of the amount
- a statement that the consumer has the right to redeem collateral under certain circumstances
- the amount of any deficiency that remains after collateral is sold
- if the consumer still has the right to cure, the total payments or performance that would be required by the consumer in order to cure the default
- ✓ • an accurate copy of the writings evidencing the transaction

What happened in this case is that the consumer owed money for purchases on a credit card issued by Household Bank of North America. Household sold the account to Collins Financial Services, which in turn sold the account to Rsidue, who is the debt collector that brought the action against the consumer.

There is no rational reason why a debt collector who purchases a debt from a creditor would not be required to provide the same information in a complaint that would be required to be provided by the original creditor. This is simply an oversight that occurred when this statute was written – or perhaps, the drafters of this statute *thought* that assignees were automatically covered. While the court of appeals agrees that this should be the result, they were bound by the express words of the statute. So an amendment is necessary to clarify this.

Thank you for your consideration.